



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawaii Civil Rights Commission Office

July 1, 2016

1:00 p.m.

Present: Linda Krieger, Kim Coco Iwamoto, Wally Fukunaga, and Artemio Baxa, Commissioners; Bill Hoshijo, Marcus Kawatachi, and Robin Wurtzel, Staff.

In Chair Linda Krieger's absence, Commissioner Kim Coco Iwamoto called the meeting to order. Commissioners Wally Fukunaga and Artemio Baxa were present.

Approval of Minutes

The minutes of the June 2, 2016, meeting were approved. (m/s/p Fukunaga/Iwamoto; 3-0 in favor).

Chair Krieger joined the meeting.

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2016 HCRC Mediation Program year-end summary.

Summary & Details (7/1/15 through 6/30/16)

Referrals:	42
Dispositions:	53
Settlements:	30
Non-agreements:	23
Settlement Rate:	56.6 %
Employment cases settled:	24
Non-employment cases settled:	6
Dual-filed (EEOC/HCRC) settlements:	21
State-only settlements	9

Primary Bases for Complaints Settled in Mediation

Disability	12
Sex	5 (3 pregnancy, 2 sexual harassment)
Age	4
Arrest & Court Record	3
Religion	2
Retaliation	2
National Origin/Ancestry	1
Race	1

Dispositions by Mediation Center

Mediation Center of the Pacific	21/32	(settlement rate 65.6 %)
Mediation Services of Maui	3/4	(settlement rate 75%)
Private Mediators	2/5	(settlement rate 40 %)
Ku'ikahi Mediation Services (Hilo)	2/5	(settlement rate 40 %)
West Hawaii Mediation Center	1/4	(settlement rate 25%)
Kauai Economic Opportunity, Inc.	1/3	(settlement rate 33.3%)
OVERALL	30/53	(settlement rate 56.6%)

DED Kawatachi noted that the number of mediated settlements (30) in FY 2016 was much higher than the number in FY 2014 (15) and FY 2015 (15), although the settlement rate in FY 2016 (56.6%) was comparable to the settlement rates in FY 2014 (60%) and FY 2015 (53.6%).

Chair Krieger expressed an interest in an analysis of the data, of what constituted “successful” mediation. DED Kawatachi noted that even when mediation did not result in a settlement and disposition at that point, the mediation might serve as the foundation for a settlement at a later stage of the case. Chair Krieger was interested in the terms of the mediation settlements, and what kind of relief was being obtained. Executive Director (ED) Hoshijo noted that the results of mediation settlements would be reported in the aggregate in the HCRC annual report, with examples of settlements.

DED Kawatachi also presented a data and production report showing caseload data through July 1, 2016.

As of July 1, 2016, the report showed 261 open cases, a decrease of 30 cases from the number reported as of June 2, 2016. Of those, 1 (0.4%) was filed in 2011, 2 (0.8%) in 2012, 5 (1.9%) in 2013, 14 (5.4%) in 2014, 107 (41.0%) in 2015, and 132 (50.5%) in 2016.

DED Kawatachi said there would be a concerted effort to address the oldest investigation cases.

Commissioner Iwamoto wondered what would be an ideal number of cases in the investigation caseload.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2011	2012	2013	2014	2015	2016	Total
Housing Cases	0	1	0	0	5	12	18
Intake Stage	0	0	3	11	47	87	148
Mediation	0	1	1	1	12	16	31
Pending Assignment	0	0	0	0	26	6	32
Active Investigation	1	0	1	2	17	11	32
TOTAL	1	2	5	14	107	132	261

The report included year-end data for the past five fiscal years, showing that the number of complaints filed, investigations closed, notices of cause issued, and enforcement closures were the highest in the last five years:

Category	7/1/11 – 6/30/12	7/1/12 – 6/30/13	7/1/13 – 6/30/14	7/1/14 – 6/30/15	7/1/15 – 6/30/16
PCQ Received	776	691	699	692	679
Intake Decision	705	745	659	663	716
Complaint Filed	408	324	290	349	390
Investigation Closed	334	352	376	234	472
Notice of Cause	8	6	6	18	22
Enforcement Closure	21	8	7	14	25

Chair Krieger offered the Commission's congratulations on staff productivity. Commissioner Fukunaga noted that it was difficult to discern numbers versus quality when looking at production data.

DED Kawatachi reported that there were no actions or pending actions for subpoena enforcement.

DED Kawatachi and ED Hoshijo reported that the HCRC statewide training for civil rights mediators had been completed, with the last training in Kona on June 16.

ED Hoshijo reported that HCRC, EEOC, and HUD were scheduled to present a civil rights training for Native Hawaiian Legal Corporation (NHLC) staff in late July.

ED Hoshijo also reported that the HCRC Annual Public Training was scheduled for October 12, 2016.

Chief Counsel's Report

In Chief Counsel (CC) Livia Wang's absence, due to an extended medical leave, ED Hoshijo offered a brief update.

In the *Bate* appeal, there was nothing new to report.

In the *Elento* appeal, there was nothing new to report.

Legislation 2016 Session

The Commissioners reviewed Legislative Summary 6, presented by Staff Attorney Robin Wurtzel.

2016 LEGISLATIVE SUMMARY 6

Staff Attorney Robin Wurtzel reported on the status of two bills that were passed by the legislature:

HB 1739, H.D. 2, S.D. 1, C.D. 1

Relating to Employment; Personal Social Media Account; Privacy, Employment

Amends HRS Ch. 378 Part I to prohibit employers from requiring or requiring employees to grant access to personal social media accounts, and by adding subsection (10) to prohibit employers from discriminating because of person's refusal to disclose information regarding a personal account

Status: The House agreed to SD1, and the bill went to the Governor for approval or veto. The SD1 provides for enforcement by DLIR and a fine of \$25-\$100 for violations. The Governor issued a notice of intent to veto on June 27, 2016. (Governor's Message No. 1227).

HB 2084, H.D. 2, S.D. 1

Relating to Health Insurance and prohibiting discrimination on a person's gender identity

Prohibits health insurers from discriminating on the basis of actual gender identity or perceived gender identity

Status: The House accepted S.D. 1. The Governor signed the bill on June 29, 2016, and it was enacted as Act 135. (Governor's message No. 1237).

New Business

On the implementation of Act 135, prohibiting discrimination in health insurance based on gender identity, ED Hoshijo offered a suggestion, for discussion purposes, that the HCRC convene a "round table" to address the implementation and enforcement of the Act.

Chair Krieger suggested that the first step should be a letter from the Chair to the Insurance Commissioner and the Director of Health, asking them to meet and engage in discussion of Act 135. She also asked if the Commission could hold a hearing on the subject, and ED Hoshijo responded affirmatively, noting that the Commission had held similar subject matter public hearings in the past and issued reports.

Commissioner Iwamoto offered a motion, which was approved, that the Commission request, direct, and authorize Chief Counsel to draft proposed rules on gender identity discrimination in employer-provided health benefit plans. (m/s/p Iwamoto/Fukunaga; 4-0 in favor).

Old Business

ED Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

There was nothing new to report or discuss on the status of Commissioner terms and vacancies.

There was nothing new to report or discuss on rulemaking.

Announcements

Commissioner Fukunaga shared that his travel to Hakone, Japan, was a profound experience, inspiring and gratifying.

Closed session

There was no closed session.

Next Meeting

The next meeting of the Commission was tentatively scheduled for August 9, 2016, at 1:00 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment